Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.
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No. 85-61 (3)

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1985

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WALLACE MC FARLAND, Petitioner,

v.

MC GUINN, HILLSMAN & PALEFSKY and JOHN HILLSMAN; and BETHLEHEM STEEL CORPORATION, Respondents etc et al.

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ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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# REPLY TO BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

CORRECTED COPY

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Wallace McFarland
1322 McAllister Street
San Francisco, California 94115
(415) 567-1446

September 24, 1985

In Propria Persona

BEST AVAILABLE COPY

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## CLARIFICATION OF QUESTIONS PRESENTED

Petitioner's original Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit set forth ten (10) "Questions Presented" at pages 1-5. Question 5 at page 2 of Wallace McFarland's petition set out an incomplete question due to a clerical error in typing. To clarify Question 5 for this Court, Petitioner corrects Question 5 to read as follows:

> 5. Whether the district court's record reflected a proper entry of a separate judgment in compliance with Federal Rule 58 as to its order prohibiting petitioner from filing any further complaints prepared by petitioner, including any amended complaint requested by petitioner, which was noted on the district court's docket as having been entered March 23, 1984, two months prior to filing of said order.

Question 6 at page 3 of Wallace McFarland's petition sets forth the date of discovery that the trial judge's order dated May 22, 1984, was not correctly entered, i.e., that it was set forth on the clerk's docket

as having been entered March 23, 1984. The petitioner did not discover this fact until May 1, 1985.

Question 7 at page 3 discusses newly discovered evidence. The newly discovered evidence referred to is the fact that the actual court record (original) order dated May 22, 1984, concerning future complaints filed by Mr. McFarland was not stamped entered until after the Ninth Circuit Court of Appeals had rendered its final decision. Petitioner did not discover the fact that the court clerk had gone back and modified the court record by placing the "Entered In Civil Docket" stamp on this document until July, 1985.

Question 9 at page 3 should correctly read as follows:

> 9. Whether the Ninth Circuit Court of Appeals dismissed petitioner's motion for reconsideration in error, as mentioned by the dissenting judge ... The trial judge did not end his order on 5/24/84. (language omitted here for brevity to remain)

## PETITIONER'S RESPONSE TO ISSUES RAISED IN RESPONDENT'S OPPOSITION BRIEF

First, petitioner wishes to point out that only one Respondent-Defendant, Bethlehem Steel Corporation, has taken opposition to the Petition for Writ of Certiorari filed by Wallace McFarland. Therefore, petitioner must assume none of the other parties to this action oppose his petition.

Respondent's Statement of the Case at page 2 sets out, inter alia, "a Decision and Order was rendered finding that the alleged accident did not occur...". However, the Administrative Law Judge further stated in that same paragraph: "...or, if it did, the claimant suffered no injury or disability as a result of it. ..."

Respondent further misstates the background of the case at page 3 where it states that Wallace McFarland filed four complaints with the United States District Court each generally alleging fraud, misrepresentation, breach of contract, racial discrimination

and violation of various civil rights, and that it was res judicata that no accident had occurred. This simply is not true.

Petitioner has filed four complaints in the U.S. District Court. However, the allegations and claims were not identical, although the claims may have grown out of similar factual events. Further, because the administrative decisions as to the occurrence of the accident was stated in the alternative, the res judicata effect of the occurrence of "an accident" remains unclear rather than conclusive (see page 4, Respondent's Brief); and plaintiff has sustained damages, not just from the controverted "accident", but also from procedural errors during the administrative agency proceedings.

In Respondent's Summary of Argument at page 5, argument 2, Bethlehem Steel Corporation raises for the first time the argument that plaintiff sought reversal of Judge Orrick's order(s) on the basis of inability to obtain legal counsel, and that such was a

grounds to allow untimely appeals. Petitioner never advanced or argued such a position and does not advance such a tenuous argument in his Petition for Writ of Certiorari. Petitioner does, however, clearly argue that Judge Orrick's order(s) added so much confusion to the proceedings, and that the court's record was so full of errors to create inconclusive decisions (or judgments) and unintelligible orders.

Neither the parties, the Ninth Circuit Court of Appeals, nor the United States Supreme Court should speculate on what Judge Orrick intended in issuing his May 22, 1984 order deciding certain conclusions as to defendants and using this as a grounds to dismiss plaintiff's complaint; nor should they speculate on what date the court intended to enter the May 22, 1984 entry. We must not speculate as to why the court extended the time for oral argument on Defendant Shipyard and Marine Shop Laborers Local

886's Motion to Dismiss from June 15, 1984 to June 21, 1984, when it recalendared the May 25, 1984, hearing at the time of signing the May 22, 1984 order. What we do know from these facts is that the litigation had not concluded.

Respondent, at page 8 of its brief, refers to Judge Orrick's Order of May 22, 1984, regarding filing future complaints as a procedural order directed to the clerk which can be separated from the May 22, 1984 order dismissing plaintiff's complaint for defendants' failure to state a claim upon which relief can be granted against the moving defendants or any of the named defendants. However, these orders are not only inseparable as continuous acts, but they are inseparable as simultaneous acts in time. Further, respondent wishes this court to believe that errors of the trial court were typographical or insignificant in character and effect. The contrary should be evident from the foregoing discussion; and this

court should be informed that the so called "procedural order" was likewise substantively defective in that it states plaintiff filed four identical actions that name virtually the same parties as defendants; (emphasis added). Again, this is a plain error in fact; clearly evident upon review of each complaint on file with the district court.

Respondent wants this court to construe the so called "procedural order" to be a proper, non-prohibitive use of judicial discretion. However, contrary to respondent's argument that the trial court's order could not prevent him (petitioner) for (sic) filing further suit in the U.S. District Court for the Northern District of California, the order states the clerk ..." shall not file any further complaint prepared by Mr. Wallace McFarland." This determination is based on an inaccurate assessment of petitioner's prior complaints, is not a proper remedy for abuse of process, and is an

attempt to supercede and circumvent Rule 12 of the Federal Rules of Civil Procedure.

Finally, at page 10 of its brief, Respondent argues that Petitioner should be chastised rather than rewarded for exercising his legal rights in seeking a review of a lower court's action in a higher reviewing court. Petitioner does not agree with the proffered treatment as an appropriate argument in the highest court of the United States, nor does he believe such treatment is proper when at least one circuit judge agreed with petitioner's point of view at the appellate level. Such a remedy seems abusive and demeaning to persons seeking legal redress according to the laws of the United States.

Date: September 24, 1985

Respectfully submitted,

Wallace McFarland

Petitioner,
In Propria Persona